

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SUSAN WISE a/k/a SUSAN WEISS,)
)
Plaintiff,)
)
vs.) Case No. 4:10CV00095 AGF
)
WHEATON VAN LINES, INC.,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter comes before the Court on Defendant Wheaton Van Lines, Inc.'s Motion for Costs, Including Attorneys' Fees, and Motion to Stay Proceedings Pending Compliance Pursuant to Rule 41(D) (Doc. #28.) Defendant requests that Plaintiff be ordered to pay \$3,509.30 to Defendant to reimburse Defendant for its costs and attorneys' fees for work performed in a prior identical matter, Case No. 4:09CV01622-AGF, which was dismissed without prejudice because it was preempted by the Carmack Amendment.

Federal Rule of Civil Procedure 41(d) leaves to the Court's discretion whether or not to "order the plaintiff to pay all or part of the costs of that previous actions" and "stay the proceedings until the plaintiff has complied." The purpose of Rule 41(d) is to protect defendants from "vexatious lawsuits." Zaegel v. Public Finance Co., 79 F.R.D. 58, 59 (E.D. Mo. 1978). Having reviewed the record in the prior matter, Case No. 4:09CV01622-AGF, and the record in the current matter, this Court does not find that the Plaintiff is engaged in filing "vexatious lawsuits."

Accordingly,

IT IS HEREBY ORDERED that Defendant Wheaton Van Lines, Inc.'s Motion for Costs, Including Attorneys' Fees, and Motion to Stay Proceedings Pending Compliance Pursuant to Rule 41(D) (Doc. #28) is **DENIED**.

Audrey G. Fleissig
AUDREY G. FLEISSIG
UNITED STATES DISTRICT JUDGE

Dated this 30th day of July, 2010.